

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

**FILED**  
2005 OCT 25 PM 3:20  
CLERK  
US BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

Chapter 11

W.R. Grace & Co., et al.,Case No. 01-01139 (JKF)  
(Jointly Administered)

Debtors,

**NORTHEAST MINNEAPOLIS RESIDENTS' RESPONSE  
TO DEBTORS' FIFTEENTH OMNIBUS OBJECTION TO CLAIMS**

**INTRODUCTION AND BACKGROUND**

This response is filed on behalf of the Minneapolis claimants ("Claimants") identified in Debtors' Fifteenth Omnibus Objection to claims as the "Minneapolis" claims. Claimants identified below are residents of the Northeast Minneapolis neighborhood and Superfund site (EPA project # MNN000508056) where, from the 1950's to 1989, Debtor W.R. Grace disposed of asbestos-contaminated vermiculite by offering and distributing it throughout the neighborhood as "free crushed rock":

<u>Name of Claimant</u>	<u>ADDRESS</u>	<u>CITY</u>	<u>ST</u>	<u>ZIP</u>	<u>CASE NUMB ER</u>	<u>CLAIM NUMBER</u>
Lawrence Barker	1606 Jefferson Street NE	Minneapolis	MN	55413	01-01140	11331
Wallace Barko, Jr.	1916 3rd Street NE	Minneapolis	MN	55418	01-01140	11332
Sue Branch	1226 Washington St. NE	Minneapolis	MN	55413	01-01140	11333
Scott Cauwels	4021 Wooddale Avenue S	St Louis Park	MN	55416	01-01140	11264



Adam	Chase	1427 Adams Street NE	Minneapolis	MN	55413	01-01140	11334
Dwight	Christensen	681 Summer Street NE	Minneapolis	MN	55413	01-01140	11336
Caroline	Cisewski	1332-1334 Madison Street NE	Minneapolis	MN	55413	01-01140	11335
James	Craig	2101 5th Street NE	Minneapolis	MN	55418	01-01140	11337
Brad	Daystar	508 20th Avenue NE	Minneapolis	MN	55418	01-01140	11338
Mark	DePauw	1338 Jefferson Street NE	Minneapolis	MN	55418	01-01140	11339
David & Gail	Fiebiger	1316 Jefferson Street NE	Minneapolis	MN	55413	01-01140	11340
Jordan	Fineberg	825 19th Avenue NE	Minneapolis	MN	55418	01-01140	11341
Jean	Forland	1515 4th Street NE	Minneapolis	MN	55413	01-01140	11342
Patricia	Foss	636 22nd Avenue NE	Minneapolis	MN	55413	01-01140	11343
Steven	Fuller	1212 Jefferson Street NE	Minneapolis	MN	55413	01-01140	11344
Larry	Gallagher	2311 Whitewater Creek Road	Whitewater	CO	81527	01-01140	11345
Julie	Gubbin	1508 Madison Street NE	Minneapolis	MN	55413	01-01140	11346
Tobi	Harris	1530 California Street NE	Minneapolis	MN	55413	01-01140	11347
Patricia	Hughes	2212 Howard Street NE	Minneapolis	MN	55418	01-01140	11348
Keith	Johnson	2314 Quincy Street NE	Minneapolis	MN	55418	01-01140	11349
Trista	Jonk	1813 Jackson Street NE	Minneapolis	MN	55418	01-01140	11350
Martin	Kouri	1138 Jefferson Street NE	Minneapolis	MN	55413	01-01140	11351
Namie & Doris	Kouri	1138 Jefferson Street NE	Minneapolis	MN	55413	01-01140	11352
Thomas	Kouri	2000 4th Street NE	Minneapolis	MN	55418	01-01140	11353
Wayne	Kovensky	1407 Adams Street NE	Minneapolis	MN	55413	01-01140	11354
Leo	Kuelbs	1202 Jefferson Street NE	Minneapolis	MN	55413	01-01140	11355
Ella	Kuha	2106 4th Street NE	Minneapolis	MN	55418	01-01140	11356
John	Landry	20276 Spoonbill Ct.	Rogers	MN	55374	01-01140	11357
Timothy	Lees	1518 Madison Street NE	Minneapolis	MN	55413	01-01140	11358
Gunda	Luss	2117 25th Avenue South	Minneapolis	MN	55406	01-01140	11359
Philip	Martin	1610 Madison Street NE	Minneapolis	MN	55413	01-01140	11360



Sharon	Martin	1134 Jefferson St. NE, #1	Minneapolis	MN	55413	01-01140	11361
Mike	Miskowiec	1432 5th Street NE, #3	Minneapolis	MN	55413	01-01140	11362
Robert	Nordstrom	690 Lowry Avenue NE	Minneapolis	MN	55418	01-01140	11363
Chyleen	Ostlund	1412 Monroe Street NE	Minneapolis	MN	55413	01-01140	11364
Zaharias	Pakirtzis	7201 36th Avenue N Apt #118	Crystal	MN	55427	01-01140	11365
Gary	Patch	1502 Madison Street NE	Minneapolis	MN	55413	01-01140	11366
Mahtab	Rezai	1539-4th Street NE	Minneapolis	MN	55413	01-01140	11367
John	Russink	429 20th Avenue NE	Minneapolis	MN	55418	01-01140	11368
Gail	Schack	1210 Jefferson Street NE	Minneapolis	MN	55413	01-01140	11369
William	Schaefer	1435 Adams Street NE	Minneapolis	MN	55413	01-01140	11370
Carla	Sellers	1732 Jefferson Street NE	Minneapolis	MN	55413	01-01140	11371
Jean	Seymour	1812 5th Street NE	Minneapolis	MN	55418	01-01140	11372
John	Smith	2415 Garfield Street NE	Minneapolis	MN	55418	01-01140	11373
Jon	Soucek	1715 5th Street NE	Minneapolis	MN	55413	01-01140	11374
Timothy	Speidel	1724 Jefferson Street NE	Minneapolis	MN	55413	01-01140	11375
St. John's Lutheran Church		610 Broadway St NE	Minneapolis	MN	55413	01-01140	11378
Delores	Sydloski	1431-4th Street NE	Minneapolis	MN	55413	01-01140	11376
Clemens	Szykalski	2407 Jefferson Street NE	Minneapolis	MN	55418	01-01140	11377
Elizabeth	Taft	1718 Jefferson Street NE	Minneapolis	MN	55418	01-01140	11380
Brian	Treffert	2331 Monroe Street NE	Minneapolis	MN	55418	01-01140	11379
Paul	Van ryswyk	1927 University Avenue NE	Minneapolis	MN	55418	01-01140	11381
Randy	Vanderwood	1337 Adams Street NE	Minneapolis	MN	55413	01-01140	11382
William	Worley	1720 6th Street NE	Minneapolis	MN	55413	01-01140	11383

All Claimants allege that Debtor W.R. Grace's contamination of their Northeast Minneapolis neighborhood has caused a diminution in value to their real estate.

Claimants specifically allege that they have suffered stigma loss, a measurable property



value loss associated with real estate in proximity to contaminated property, and that this loss is recoverable under Minnesota law.

### ARGUMENT

In Debtors' Fifteenth Omnibus Objection to Claimant's claims, Debtors incorrectly assert that Minnesota does not recognize "stigma" as a recoverable property loss. This misrepresents Minnesota law. In Dealer's Mfg. Co. v. County of Anoka, 615 N.W.2d 76 (Minn. 2000), the Minnesota Supreme Court held that the stigma associated with present, past or potential environmental contamination is a recoverable property loss. In Dealers, the plaintiff was a property owner challenging the county's assessment of its property, which was a state superfund site in the midst of clean up.

In Dealers, the Minnesota Supreme Court overturned the lower court and accepted the testimony of MAI appraiser Al Leirness and uniform appraisal standards in holding that environmental contamination and the "stigma" associated with contaminated, formerly contaminated, and potentially contaminated property is a recoverable property loss. The Court correctly acknowledged that stigma can exist where contamination is "present, [is] threatened, [or is] totally absent." Id. at 79. The Court reasoned that "clean up costs, fear of liability, lack of mortgageability" are factors that a court should consider in valuing property that is contaminated, formerly contaminated, or near known contaminated property.

Based on the holding in Dealers alone, Debtors' objection to the Northeast Minneapolis claims should be denied.



Debtors further specifically object to Claimants' claims, charging that claimants have failed to provide "supporting documentation. Debtors have contended that Bankruptcy Rule 3001(c) allows the Court to deny, reduce or reclassify Claimants' claims for failure to provide supporting documentation. Debtors' reliance on Rule 3001(c) is misplaced.

Rule 3001(c) requires that, where a claim is "based on a document" (e.g. a security interest in personal property), the document establishing the claim (e.g. the security agreement) be attached to the proof of claim. Claimants' claims here are not based on a discrete document. Claimants' claims are based on the widespread contamination of their neighborhood with microscopic particles of asbestos, many of which have yet to be contained and remediated.

All of the Claimants commonly claim damages as a result of Debtor's dissemination of asbestos-contaminated vermiculite throughout their Northeast Minneapolis neighborhood for a period of over 40 years. The EPA's initial visual inspection of these properties identified extremely high quantities (8 to 20% percent in some outdoor samples) of contamination.

All Claimants' claims referenced the lawsuit of Chase v. W.R. Grace Co.-Conn., (Ex. E, Hennepin County File No. 00-014792.) In October of 2000, Claimant Adam Chase, on behalf of himself and all other Northeast Minneapolis residents affected by the contamination, commenced a putative class action against Debtor, alleging violations of the Minnesota Environmental Response and Liability Act ("MERLA"), the Minnesota Consumer Fraud Act, nuisance, strict liability, and negligence.



In his Complaint Mr. Chase sought, for himself and all others similarly situated, the costs of investigation, soil borings, remediation, the loss in value to his property due to contamination and loss in value to his property due the ongoing "stigma" caused by the widespread contamination (and, at present, possibly incomplete remediation) of properties in the neighborhood. Debtor filed for bankruptcy protection in April of 2001, staying Mr. Chase's putative class action.

All Claimants referenced the Chase lawsuit in their Proof of Claim forms, thus providing Debtors with notice of the precise nature of their claims. Debtors are further acutely aware of the actual contamination WR Grace caused in Northeast Minneapolis, as the neighborhood is now a Superfund site managed by the EPA with assistance from the Minnesota Pollution Control Agency.

### **CONCLUSION**

In sum, Debtors' objection incorrectly asserts that Minnesota does not recognize stigma as a recoverable property loss. Debtors' objection that Claimants have not provided adequate notice of the nature and extent of their claims is similarly without merit. Claimants' Proofs of Claim specifically alleged stigma loss and referenced their relationship with a putative class action seeking recovery of this loss. As indicated by its objection identifying Claimants as the "Minneapolis" claims, Debtor is certainly aware that Claimants are all residents of a Superfund site under the administration of the United States Environmental Protection Agency. For these reasons and the reasons cited in the argument above, Debtors' objection to Claimants' claims should be denied.



Dated: 10-24-05

A handwritten signature in black ink, appearing to read "Dan Biersdorf", written over a horizontal line.

Dan Biersdorf (8187)

Bill Butler, Of Counsel (227912)

BIERSDORF & ASSOCIATES, P.A.

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ATTORNEYS FOR CLAIMANTS



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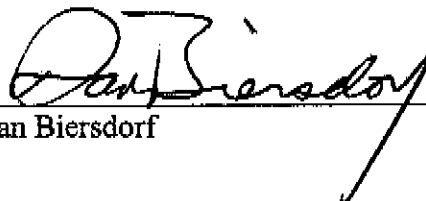
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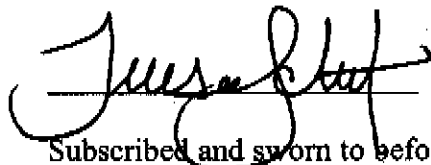
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**AFFIDAVIT OF DAN BIERSDORF**

1. I am one of the attorneys that have assisted the Claimants identified in the attached Response to Objection in asserting their claims against Debtors.
2. Within the last fourteen days, our office attempted to establish an electronic case filing account with this Court. We were informed that, because of the recent change in the Bankruptcy law and resultant increased case filing volume, there was no guarantee that the Court could establish an account in time to allow an ECF filing of Claimants' response. As a result, we have arranged for this paper filing.

  
Dan Biersdorf



Subscribed and sworn to before me this 24<sup>th</sup> day of October, 2005.

NOTARY PUBLIC

